Supreme Court, U.S.
FILED
AUG 26 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-146

In The
Supreme Court of the United States
October Term, 1987

—o—

SMITH BARNEY, HARRIS UPHAM & CO., INC., and ALBERT ROBERTS, III,

Petitioners,

vs.

EDWARD J. ADRIAN and RUTH C. ADRIAN,

Respondents.

—o—

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

—o—

BRIEF OF RESPONDENTS IN RESPONSE TO PETITION OF SMITH BARNEY, HARRIS UPHAM & CO., INC. AND ALBERT ROBERTS, III, FOR WRIT OF CERTIORARI

—o—

JOHN B. GIBBONS, ESQUIRE
KIRK M. GIBBONS, ESQUIRE
GIBBONS, SMITH, COHN & ARNETT, P.A.
906 First Union Bank Building
501 East Kennedy Boulevard
Post Office Box 2177
Tampa, FL 33601
(813) 221-3730
Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii
SUMMARY OF ARGUMENT 1
REASONS FOR GRANTING THE WRIT 2
CONCLUSION 3

TABLE OF AUTHORITIES

Page

CASES

Shearson/American Express, Inc. v. McMahon, 478 U.S. —, 107 S.Ct. 2332, 55 U.S.L.W. 4757 (June 8, 1987) 2

STATUTES

Federal Securities Exchange Act of 1934, § 10(b) 15 U.S.C. § 78(j)(b) - [10(b)] 2

Federal Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1961 *et seq.* 1, 2

REGULATIONS

Federal Securities and Exchange Commission 17 C.F.R. § 240.15c2-2 1

No. 87-146

In The
Supreme Court of the United States
October Term, 1987

SMITH BARNEY, HARRIS UPHAM & CO., INC., and ALBERT ROBERTS, III,

Petitioners,

vs.

EDWARD J. ADRIAN and RUTH C. ADRIAN,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF RESPONDENTS IN RESPONSE TO PETITION OF SMITH BARNEY, HARRIS UPHAM & CO., INC. AND ALBERT ROBERTS, III, FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

Since there is no valid, enforceable arbitration agreement between the parties by virtue of 17 C.F.R. § 240.15c2-2 and by the terms of the agreement itself, the Eleventh Circuit Court was correct in refusing to compel arbitration of Petitioners' claims under the Federal RICO Act and the

Securities Exchange Act of 1934. However, for the reasons set forth in the ADRIANS' Cross-petition for Writ of Certiorari filed herewith, this Court should grant the writ and hold that none of the ADRIANS' claims are proper subjects of compulsory arbitration.

—o—

REASON FOR GRANTING THE WRIT

In the courts below, the ADRIANS asserted that because of 17 C.F.R. § 240.15c2-2 and the terms of the SMITH BARNEY Customer's Agreement itself, there was no valid, enforceable arbitration agreement for the courts to enforce. Therefore, arbitration could not be compelled as to any of the ADRIANS' claims. Both the district court and the circuit court ignored this argument. Nevertheless, the circuit court refused to compel arbitration of the ADRIANS' claims under § 10(b) of the Securities Exchange Act of 1934 and the Federal Racketeer Influenced and Corrupt Organizations Act based upon its own rulings that these claims were not subject to compulsory arbitration. Since that decision, this Court has ruled in *Shearson/American Express, Inc. v. McMahon*, 478 U.S. —, 107 S.Ct. 2332, 55 U.S.L.W. 4757 (June 8, 1987) that such claims may be arbitrated.

As shown in the ADRIANS' Cross-petition for Writ of Certiorari filed herewith, there is no valid, enforceable arbitration agreement between Petitioners and the ADRIANS. Accordingly, none of the ADRIANS' claims are subject to compulsory arbitration even in light of *McMahon*.

CONCLUSION

For the reasons set forth in the ADRIANS' Cross-petition for Writ of Certiorari filed herewith, the Court should issue the Writ as to the Cross-petition and determine that the ADRIANS' claims are not arbitrable.

Respectfully submitted,

JOHN B. GIBBONS, ESQUIRE
KIRK M. GIBBONS, ESQUIRE
GIBBONS, SMITH, COHN & ARNETT, P.A.
906 First Union Bank Building
501 East Kennedy Boulevard
Post Office Box 2177
Tampa, FL 33601
(813) 221-3730
Attorneys for Respondents